

Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 EA-06 ISO-00 SSO-00 NSCE-00 USIE-00

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NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 AID-05 PC-01

IO-10 TRSE-00 /084 W

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O R 161315Z JUN 75

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC IMMEDIATE 9257

INFO AMEMBASSY COLOMBO

AMEMBASSY DACCA

AMEMBASSY KATHMANDU

AMEMBASSY LONDON

AMEMBASSY MOSCOW

CINCPAC HONOLULU PR

AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL HONG KONG

AMCONSUL MADRAS

USLO PEKING

C O N F I D E N T I A L SECTION 1 OF 2 NEW DELHI 7903

CINCPAC FOR POLAD

E.O. 11652: GDS

TAGS: PFOR, IN, PINT

SUBJ: ALLAHABAD COURT CASE

SUMMARY: CONGRESS AND COMMUNIST PARTY OF INDIA (CPI)
POLITICANS CONTINUE TO PROCLAIM SUPPORT FOR MRS. GANDHI.
NON-CPI OPPOSITION LEADERS JUST AS VOCIFEROUSLY ARE DEMANDING
THAT SHE STEP DOWN. MRS. GANDHI'S PUBLIC STATEMENTS
SUGGEST SHE INTENDS TO "TOUGH IT OUT" BUT SHE HAS NOT SET
FORTH HER POSITION UNEQUIVOCALLY. ON JUNE 20 HER LAWYERS
ARE EXPECTED TO FILE AN APPEAL WITH THE VACATION JUDGE AT THE
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SUPREME COURT. IF HE REFUSES TO GRANT AN IMMEDIATE

AND ABSOLUTE STAY EXTENDING THE ALLAHABAD HIGH COURT STAY MRS. GANDHI WILL COME UNDER MORE PRESSURE TO STEP DOWN. THE CHIEF JUSTICE, WHOM MRS. GANDHI SELECTED IN 1973 OVER THE HEADS OF HIS THREE SENIOR COLLEAGUES, CAN SPEED UP THE APPEAL. THE VACATION JUDGE IS A FORMER PRO-CPI POLITICIAN. HIS DECISION ON MRS. GANDHI'S CRUCIAL STAY REQUEST AND THE CHIEF JUSTICE'S DECISION ON ACCELERATING THE HEARINGS WILL BE IMPORTANT INDICATORS OF HOW MRS. GANDHI WILL FARE IN THE SUPREME COURT. OUR ASSESSMENT IS THAT MRS. GANDHI WILL CONTINUE ON THE SUPREME COURT APPEALS TRACK AND NOT RESIGN EVEN TEMPORARILY, GIVEN THE RISKS TO PARTY UNITY AND HER OWN POSITION THAT THIS WOULD ENTAIL. THUS FAR "FOREIGN" ISSUES HAVE BEEN REFERRED TO ONLY IN PASSING BY CONGRESS POLITICIANS. END SUMMARY.

1. THERE WERE NO MAJOR DEVELOPMENTS IN MRS. GANDHI'S COURT CASE OVER THE WEEKEND. BOTH THE CONGRESS AND THE OPPOSITION ARE CONTINUING THEIR EFFORTS TO RALLY SUPPORT. VIRTUALLY ALL CONGRESS CHIEF MINISTERS AND CONGRESS STATE COMMITTEE CHAIRMEN ARRIVED IN NEW DELHI BY FRIDAY TO JOIN A CONSTANT STREAM OF MUCH PUBLICIZED TRAFFIC - MOSTLY TRANSPORTED IN FROM NEIGHBORING HARAYANA AND U.P. IN COMMANDEERED BUSES - TO THE PRIME MINISTER'S FRONT LAWN. ABOUT ONCE EVERY HOUR OR TWO, MRS. GANDHI EMERGES, SAYS A FEW WORDS TO THE LATEST ASSEMBLED CROWD, AND DISAPPEARS INSIDE FOR DISCUSSION WITH SENIOR PARTY MEMBERS, PERSONAL WELL-WISHERS AND LAWYERS. HER OWN LAWYERS NOW INCLUDE INDIA'S MOST EMINENT ADVOCATE, NANI PALKIWALA WHO WILL ARGUE HER CASE IN THE SUPREME COURT. (AN IRONIC NOTE: PALKIWALA, DIRECTOR OF TATA INDUSTRIES, HAS BEEN A FREQUENT CRITIC OF MRS. GANDHI'S ALLEGED "DEBASEMENT" OF THE INDIAN CONSTITUTION.) CONGRESS STATE CABINETS AND PARTY ORGANIZATIONS FROM AROUND THE COUNTRY CONTINUE TO SEND MESSAGES OF SUPPORT, URGING HER NOT TO RESIGN. AT LEAST TWO HEADS OF GOVERNMENT ABROAD, MAURITIUS PM RAMGOOLAM AND SRI LANKA'S PM MADAM BANDARANAIKE, HAVE SENT TELEGRAMS WISHING THE PRIME MINISTER SUCCESS. THE CONGRESS LEGISLATIVE PARTY, THE BODY THAT HAS CHOSEN ALL OF INDIA'S PRIME MINISTERS, WILL MEET JUNE 17, PRESUMABLY TO ENDORSE THE PRIME MINISTER. LEADERS OF MOST OPPOSITION PARTIES

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ARE IN THE THIRD DAY OF A ROHGTION "SIT-IN" AT THE PRESIDENTIAL PALACE. THEY WILL PRESENT PRESIDENT AHMED WITH A STATEMENT THAT THE OPPOSITION NO LONGER RECOGNIZES MRS. GANDHI AS PRIME MINISTER AFTER ALMED RETURNS TO DELHI JUNE 16.

2. THE OPPOSITION HAS STILL NOT COORDINATED ITS POSITIONS. THE JANA SANGH, SOCIALISTS, AND BLD NATIONAL COMMITTEES ALL

MET OVER THE LAST FEW DAYS IN DIFFERENT CITIES AND THEIR LEADERS WILL BE GATHERING TO DISCUSS FUTURE TACTICS THIS WEEK. THEY HAVE AGREED TO ADHERE TO THE POSITION THAT THEY NO LONGER RECOGNIZE MRS. GANDHI AS PM. THEY ARE, CONSEQUENTLY, DETERMINED TO DISRUPT PARLIAMENTARY PROCEEDINGS SHOULD THESE BE COMMENCED AND TO PRESS HOME IN EVERY WAY THEIR DEMAND FOR HER RESIGNATION. SOME OPPOSITION LEADERS CONTINUE TO SPEAK PRIVATELY OF ULTIMATELY RESORTING TO MASS CIVIL DISOBEDIENCE AND TO WARN THAT THIS COULD BRING MRS. GANDHI TO RESORT TO VIOLENCE AND EVEN TO SUPPRESSION OF THE OPPOSITION IN THE MONTHS AHEAD. WHETHER THE OPPOSITION LEADERS, WITH THEIR WIDELY DIFFERING VIEWS AND OBJECTIVES (ASIDE FROM REMOVING MRS. GANDHI), WILL BE ABLE TO STICK TOGETHER AND KEEP THEIR FOLLOWERS DISCIPLINED IN FOLLOWING SUCH A COURSE IS EXTREMELY UNCERTAIN AT THIS JUNCTURE.

3. MRS. GANDHI'S STATEMENTS TO THE GROUPS ROTATING THROUGH HER FRONT YARD PROVIDE FURTHER INDICATION THAT SHE INTENDS TO "TOUGH IT OUT," THOUGH SHE IS YET TO CONFIRM THIS DIRECTLY. PRESS REPORTS QUOTE HER AS STATING THAT THOSE DEMANDING HER RESIGNATION WERE "NOT ACCEPTING" THE HIGH COURT'S STAY ORDER; THAT THE ALLAHABAD DECISION DID NOT IDENTIFY HER AS PERSONALLY COMMITTING CORRUPT PRACTICES; AND THAT THE CONGRESS PARTY WOULD EMERGE STRONGER FROM THE PRESENT CRISIS, AS IT HAS AFTER PAST CRISES. ONE REPORT QUOTES HER AS STATING THAT "MY PHILOSOPHY OF LIFE IS THAT WHATEVER I DO, I DO WITH COURAGE AND STRENGTH. I DO NOT LOSE HEART WHEN FACED WITH ODDS OR CHALLENGES."

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ACTION NEA-10

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NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 AID-05 PC-01

IO-10 TRSE-00 /084 W

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FM AMEMBASSY NEW DELHI
TO SECSTATE WASHDC IMMEDIATE 9258
INFO AMEMBASSY COLOMBO
AMEMBASSSMDACCA
AMEMBASSY KATHMANDU
AMEMBASSY LONDON
AMEMBASSY MOSCOW
CINCPAC HONOLULU HI
AMCONSUL BOMBAY
AMCONSUL CALCUTTA
AMCONSUL HONG KONG
AMCONSUL MADRAS
USLO PEKING

C O N F I D E N T I A L SECTION 2 OF 2 NEW DELHI 7903

CINCPAC FOR POLAD

4. A CRUCIAL JUNCTURE IN MRS. GANDHI'S EFFORT TO REMAIN IN OFFICE WILL PROBABLY COME ON JUNE 20 WHEN HER LAWYERS ARE EXPECTED TO FILE HER APPEAL WITH THE SUPREME COURT VACATION JUDGE, JUSTICE IYER. RAJ MARAIN, THROUGH HIS LAWYERS, HAS FILED A "CAVEAT" WITH THE COURT REQUESTING THAT NO "EX-PARTE" HEARING BE GRANTED IN HIS ABSENCE. WHEN MRS. GANDHI'S LAWYERS FILE HER APPEAL, JUDGE SINHA'S 20-DAY STAY WILL TERMINATE. IT WILL BE IMPORTANT TO THE PRIME MINISTER THAT IYER (A) GRANT THE STAY SIMULTANEOUS WITH THE FILING OF THE PETITION AND (B) GRANT AN ABSOLUTE STAY" RATHER THAN A "CONDITIONAL" STAY. THE LATTER COURSE WOULD ALLOW MRS. GANDHI
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ONLY TO ATTEND BUT NOT TO PARTICIPATE IN PARLIAMENTARY SESSIONS. ON JUNE 15 THE CONGRESS PRESIDENT ISSUED A STATEMENT TO REPORTERS THAT HE SAID COULD BE INTERPRETED AS MEANING MRS. GANDHI WOULD NOT STEP DOWN EVEN IF GRANTED "CONDITIONAL" STAY.

5. RAJ NARAIN THROUGH HIS LAWYERS WILL UNDOUBTEDLY ARGUE AGAINST IYER'S PROVIDING A SIMULTANEOUS AND ABSOLUTE STAY IN AN ATTEMPT TO FORCE MRS. GANDHI TO CONSIDER STEPPING DOWN IN FAVOR OF AN INTERIM PRIME MINISTER. NARAIN'S LAWYERS WILL PROBABLY ALSO ATTEMPT TO PROLONG THE SUPREME COURT'S CONSIDERATION OF THE APPEAL THROUGH WIDENING THE COURT'S PURVIEW BEYOND THE TWO POINTS MRS. GANDHI HAS APPEALED AND THROUGH PROCEDURAL WRANGLING. BY DRAWING OUT THE APPEAL TO MONTHS INSTEAD OF WEEKS, THE OPPOSITION CAN HOPE TO BENEFIT POLITICALLY BY ATTEMPTING TO INTENSIFY A POPULAR CONSCIOUSNESS OF A MORAL/POLITICAL STIGMA ON MRS. GANDHI REGARDLESS OF THE SUPREME COURT VERDICT.

6. SEVERAL THINGS ARE WORKING IN MRS. GANDHI'S FAVOR AS HER

LAWYERS MOVE FOR AN IMMEDIATE EXTENSION OF THE ALLAHABAD ABSOLUTE STAY AND A SHORT APPEAL PROCESS. AS MENTIONED REFTEL, IYER IS A FORMER LEFTIST POLITICIAN (THE ONLY EX-POLITICIAN ON THE COURT) WHO OWES HIS APPOINTMENT TO MRS. GANDHI. OUR SOURCES INFORM US THAT HIS PRO-CONGRESS, PRO-SOVIET LEANINGS ARE VERY STRONG. MRS. GANDHI'S INTEREST IN A QUICK HEARING MAY BE SERVED BY A PROVISION IN THE SUPREME COURT RULES THAT ALLOWS THE CHIEF JUSTICE TO CALL A SPECIAL SESSION DURING VACATION PERIODS IN "URGENT" CASES. CHIEF JUSTICE RAY, WHO WAS APPOINTED TO HIS POSITION OVER THE HEADS OF THREE SENIOR COLLEAGUES IN 1973 (ALL PROMPTLY RESIGNED) COULD CONCEIVABLY CALL SUCH A SESSION LONG BEFORE THE COURT CONVENES JULY 16. THE JUSTICES WHOM HE SELECTS TO HANDLE THE CASE WILL ALSO HAVE WIDE DISCRETION IN THE LENGTH OF TIME THE APPEAL EVENTUALLY TAKES. THE CHIEF JUSTICE OR THE PRESIDING JUSTICE IN AN APPEAL MAY ALSO DETERMINE THAT A "QUESTION OF FACT" AS OPPOSED TO ONLY A "QUESTION OF LAW" IS RELEVANT TO THE CASE AT HAND. THIS MEANS THAT THE SUPREME COURT BENCH HEARING THE APPEAL WILL BE ABLE TO REVERSE JUSTICE SINGHA'S INTERPRETATION OF THE FACTS IN THE TWO AREAS WHERE SINHA DECIDED AGAINST MRS. GANDHI. OUR SOURCES INFORM US THAT THE PRIME MINISTER'S CONFIDENTIAL

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APPEAL IS BEING PREPARED WITH THIS IN MIND, END GDS.
BEGIN XGDS-1.

7. MRS. GANDHI MAY ALSO BE SPARED THE EMBARRASSEMENT OF A DEADLOCKED PARLIAMENT. THE "MONSOON SESSION" OF PARLIAMENT HAS TRADITIONALLY CONVENED ON OR AROUND JULY 20. BUT THE CONSTITUTION MERELY HOLDS THAT PARLIAMENTARY SESSIONS SHOULD NOT BE MORE THAN SIX MONTHS APART. THE NEXT SESSION WOULD THEREFORE NOT BE DUE UNTIL NOVEMBER. CONTRARY TO PREVIOUS PRECEDENT, NO CONVENING DATE FOR THE "MONSOON SESSION" HAS BEEN ANNOUNCED AND THE PRIVATE SECRETARY TO THE SPEAKER OF THE LOK SABHA HAS TOLD US THE PARLIAMENT WILL NOT IN FACT BE RECONVENED UNTIL THE SUPREME COURT APPEAL HAS BEEN COMPLETED, HOPEFULLY IN 6-7 WEEKS. END XGDS-1.

8. JUSTICE IYER'S HANDLING OF MRS. GANDHI'S STAY REQUEST WHEN THE APPEAL IS FILED LATER THIS WEEK, AND CHIEF JUSTICE RAY'S DECISION TO USE (OR NOT TO USE) HIS PRIVILEGE TO SPEED UP THE APPEAL'S HEARING, WILL BE IMPORTANT INDICATORS OF HOW MRS. GANDHI WILL FARE IN THE SUPREME COURT. CONGRESSMEN ARE TELLING US THAT IF SHE IS PRESSURED INTO STEPPING DOWN TEMPORARILY, HER SENIOR CABINET COLLEAGUE, MINISTER OF AGRICULTURE JAGJIVAN RAM, WILL BE UNWILLING TO CONDONE THE CONGRESS PARLIAMENTARY PARTY UNANIMOUSLY RUBBER STAMPING AN INTERIM PRIME MINISTER SELECTED BY MRS. GANDHI WHO WILL BE LOYAL TO HER, AND MOST LIKELY TO STEP DOWN

SHOULD SHE BE VINDICATED. (NAMES MOST OFTEN MENTIONED ARE DEFENSE MINISTER SWARAN SINGH AND WEST BENGAL CHIEF MINISTER S.S. RAY.) RAM IS ARGUING THAT WHILE HIS SUPPORT FOR MRS. GANDHI AS PRIME MINISTER IS TOTAL, HE WOULD NOT FEEL BOUND TO BACK HER CANDIDATE IF SHE RESIGNED.

9. OUR PRESENT ASSESSMENT IS THAT MRS. GANDHI DESIRES TO AVOID BOTH A DIVISIVE CONFRONTATION IN THE CONGRESS PARLIAMENTARY PARTY, AND THE RISKS THAT A SUCCESSOR, HOWEVER TEMPORARY, MAY NOT SUBSEQUENTLY AGREE TO STEP DOWN IN HER FAVOR. BARRING AN UNEXPECTED BUT STILL POSSIBLE SUPREME COURT REFUSAL TO EXTEND THE ALLAHABAD STAY IN ANY FORM, SHE WILL PROBABLY ATTEMPT TO STAY ON UNTIL THE COURT RULES ON HER CASE, DESPITE THE POLITICAL DAMAGE THAT WILL ACCRUE FROM HER REFUSAL TO RESIGN IN THE FACE OF PRECEDENTS AND
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DEMOCRATIC USAGE.

10. THUS FAR, EFFORTS BY CONGRESS LEADERS TO BRING IN THE "FOREIGN" ISSUE HAVE BEEN SPOTTY. MRS. GANDHI HERSELF REFERS TO THE "EXTERNAL THREAT" FROM TIME TO TIME IN ADDRESSING STREETSIDE CROWDS. SHE MADE A PASSING REFERENCE TO A CROWD ON JUNE 14 THAT AN OPPOSITION LEADER HAD WORN A "I AM A CIA AGENT" BUTTON AT A PARLIAMENTARY SESSION LAST YEAR. SHE SWIFTLY REJECTED, HOWEVER, ANY INTERPRETATION THAT THIS MEANT SHE WAS ACCUSING THE OPPOSITION LEADER OF WORKING FOR THE CIA AND CUT OFF AN EFFORT FROM THE CROWD TO RAISE SLOGANS AGAINST CIA, SAYING, "I DO NOT WANT ANY SLOGANS AGAINST THE CIA." PUNJAB CHIEF MINISTER ZAIL SINGH, JUNE 16, HOWEVER, TOLD A CHANDIGARH CROWD THAT OPPOSITION PARTIES "AND SOME FOREIGNPOWERS" HAD ALWAYS TRIED TO WEAKEN MRS. GANDHI AND WERE NOW USING THE ALLAHABAD COURT CASE TO LAUNCH A CAMPAIGN AGAINST HER. BUT THE INDIAN PEOPLE WOULD "NOT ALLOW DELHI TO BE TURNED INTO CHILE."
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